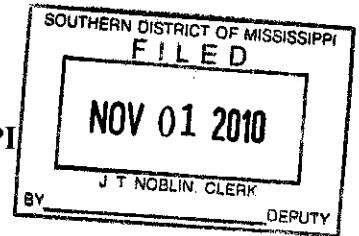


UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
WESTERN DIVISION



ROBERT EASTMAN

PLAINTIFF

v.

CIVIL ACTION NO. 5:10 CV 170 DCB  
JMR

MISSISSIPPI VALLEY SILICA COMPANY

DEFENDANT

FEDERAL INSURANCE COMPANY

GARNISHEE-DEFENDANT

NOTICE OF REMOVAL

Garnishee-Defendant, Federal Insurance Company, hereby files this Notice of Removal to remove this action from the Circuit Court of Warren County, Mississippi to the United States District Court for the Southern District of Mississippi, Western Division. Pursuant to said removal, the Circuit Court of Warren County, Mississippi shall proceed no further with this action. As grounds for removal, the defendant would show unto the Court the following:

1. On October 1, 2010, the Circuit Clerk of Warren County issued a Writ of Garnishment against Garnishee-Defendant, Federal Insurance Company.
2. On October 5, 2010, the plaintiff served Garnishee-Defendant, Federal Insurance Company, with the Writ of Garnishment. A true and correct copy of the Writ of Garnishment is attached as Exhibit A.
3. A garnishment proceeding is a civil action within the meaning of § 1441(a), and is subject to removal. *Freeman v. Walley*, 276 F. Supp. 2d 597, 598 (S.D. Miss. 2003)(citing *Johnson Great American Insurance Company*, 213 F. Supp. 2d 657, 660-61 (S.D. Miss. 2001) and *Butler v. Polk*, 592 F.2d 1293, 1296 (5th Cir. 1979)).
4. Jurisdiction of this matter is founded on diversity jurisdiction, pursuant to 28 U.S.C. § 1332 and 28 U.S.C. § 1441.

5. Plaintiff Robert Eastman is a resident of Warren County, Mississippi.

6. Garnishee-Defendant, Federal Insurance Company, was at the time of the filing of this garnishment proceeding and still is incorporated in Indiana, with its principal place of business in New Jersey.

7. There are no other defendants to join in this removal.

8. Plaintiffs demand is for \$1,960,000.00. The amount in controversy exceeds \$75,000, exclusive of costs.

**DIVERSITY JURISDICTION IS ESTABLISHED**

**Complete Diversity Exists Among the Parties.**

9. Plaintiff Robert Eastman is a resident of Warren County, Mississippi. Federal Insurance Company is incorporated in Indiana, with its principal place of business in New Jersey. Mississippi Valley Silica Company's consent is not required since it is a nominal defendant who has no claims against it in this proceeding and has no interest in the matter.

**The Amount in Controversy Exceeds \$75,000.**

10. According to the Writ of Garnishment, the plaintiff seeks to recover One Million Nine Hundred and Sixty Thousand dollars (\$1,960,000.00) plus accrued post judgment interest from Garnishee-Defendant. The amount sought by the plaintiff is well in excess of the requirement for the amount in controversy of \$75,000, exclusive of costs.

**THE PRE-REQUISITES FOR REMOVAL HAVE BEEN MET**

11. This Notice of Removal is timely because it is filed within thirty days of service of the Writ of Garnishment.

12. The prerequisites of removal under 28 U.S.C. § 1441 and 28 U.S.C. § 1332 have been met.

13. Approval of Mississippi Valley Silica Company is not required for removal. Mississippi Valley Silica Company has no claims against it in this proceeding and has no interest in the matter.

14. Written notice of this Notice of Removal will be given to the adverse party as required by law.

15. A true and correct copy of this Notice of Removal will promptly be filed with the Clerk of the Circuit Court of Warren County, Mississippi.

16. The allegations of this Notice of Removal are true and correct; this cause is within the jurisdiction of the United States District Court for the Southern District of Mississippi, Western Division.

17. If any question arises as to the propriety of removal of this action, the defendant requests an opportunity to present a brief oral argument and conduct discovery in support of its position that this case is removable.

18. Defendant prays that this Court will accept and retain jurisdiction over this civil action pursuant to 28 U.S.C. § 1441 and 28 U.S.C. § 1332.

RESPECTFULLY SUBMITTED, this the 1<sup>st</sup> day of November, 2010.

FEDERAL INSURANCE COMPANY

By and Through Its Attorneys:

By:



Fred Krutz, MSB # 4270

H. Barber Boone, MSB # 102266

OF COUNSEL:

FORMAN PERRY WATKINS KRUTZ & TARDY LLP

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 1, 2010, I served copies of the above to all parties via

U.S. Postal Service.

  
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FRED KRUTZ